

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 04-970111

Sales and Use Tax

For The Period: 1993 Through 1995

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ISSUES

I. Sales and Use Tax - Drugs, Medical Supplies and Equipment

Authority: IC 6-2.5-5-18; 45 IAC 2.2-5-27; 45 IAC 2.2-5-28

Taxpayer protests the imposition of sales/use tax on drugs, medical supplies and equipment.

II. Sales and Use Tax - Lump Sum Contract

Authority: 45 IAC 2.2-4-23; 45 IAC 2.2-4-25; 45 IAC 2.2-4-26

Taxpayer protests the assessment of tax on purchases made from contractors.

III. Sales and Use Tax - Services

Authority: 45 IAC 2.2-4-2

Taxpayer protests the imposition of sales/use tax on design and layout work for a newsletter.

IV. Sales and Use Tax - Casual Sale

Authority: 45 IAC 2.2-1-1(d)

Taxpayer protests the imposition of sales/use tax on the purchase of a cabinet and wheelchair.

V. Sales and Use Tax - Use Tax Paid to Another State

Authority: 45 IAC 2.2-3-16

Taxpayer protests that credit was not given for sales tax picked up in Illinois.

VI. Tax Administration - Penalty

Authority: IC 6-8.1-6-1; IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of a negligence penalty.

STATEMENT OF FACTS

Taxpayer is the owner of several healthcare facilities located in Indiana. These facilities include nursing facilities and home health care agencies. Taxpayer also owns two daycare centers. Additional facts will be provided as needed below.

I. Sales and Use Tax – Drugs, Medical Supplies and Equipment

DISCUSSION

The taxpayer protests the proposed assessment of tax on various medical supplies and equipment and also argues that the audit failed to give credit for tax paid in error. The exemption from sales/use tax on medical supplies and equipment is found under Indiana Code 6-2.5-5-18, which provides:

- (a) Sales of artificial limbs, orthopedic devices, dental prosthetic devices, eyeglasses, contact lenses, and other medical equipment, supplies, and devices are exempt from the state gross retail tax, if the sales are prescribed by a person licensed to issue the prescription.
- (b) Rentals of medical equipment, supplies, and devices are exempt from the state gross retail tax, if the rentals are prescribed by a person licensed to issue the prescription.
- (c) Sales of hearing aids are exempt from the state gross retail tax if the hearing aids are fitted or dispensed by a person licensed or registered for that purpose. In addition, sales of hearing aid parts, attachments, or accessories are exempt from the state gross retail tax. For purposes of this subsection, a hearing aid is a device which is worn on the body and which is designed to aid, improve, or correct defective human hearing.

(d) Sales of colostomy bags, ileostomy bags, and the medical equipment, and supplies and devices used in conjunction with those bags are exempt from the state gross retail tax.

(e) Sales of equipment and devices used to administer insulin are exempt from the state gross retail tax.

Additionally, 45 IAC 2.2-5-35 provides that licensed practitioners are subject to tax on all medical supplies and equipment consumed in the performance of their professional services.

With respect to nursing homes, the Department follows the following guidelines:

1. Medical supplies which qualify for the exemption from sales tax as “prescribed” must be the type of medical supplies that will be either physically transferred to the patient or are classified as invasive supplies and devices, rather than supplies and equipment used by the nursing home in the performance of its services.
2. The term “prescribed” is also intended to include physician’s orders as annotated on the patient’s chart. For example, a physician issues an order (and notes the order on the patient’s chart) that an incision is to be examined every four hours and a new dressing applied. This order is sufficient to accept as a prescription for the dressing which was applied.
3. The nursing home is responsible for adequately maintaining prescription files and patient records to support their exempt sales of medical supplies. Medical supplies purchased by these facilities where adequate proof of exemption is not maintained are to be considered as purchased by the nursing homes for their own use in the performance of the services they render and will be taxable.
4. Medical equipment, supplies, or devices which are primarily used for monitoring or diagnostic purposes do not qualify for exemption as such items do not act upon the body to correct or alleviate any injury or malfunction. Instead, these items merely identify whether actions need to be taken.
5. Purchases of medical equipment, supplies or devices, which are consumed by nursing homes in the performance of their professional services, are not exempt from the tax.

In conjunction with the above guidelines, the Department has identified the following items as generally non-taxable and taxable, respectively:

NONTAXABLE

IV supplies and solutions

Orthopedic devices

Respiratory supplies

Sutures, autosutures, staples

Oxygen and oxygen supplies

Prosthetic devices and supplies

Pacemakers

Invasive devices and supplies:

Syringes/needles

Drain tubes and bags

Feeding tubes and bags

Anesthesiology tubing, trach tubes, airways

Catheters, catheter supplies

General supplies:

Gauze, bandages, hemashields, sterile dressing kits

Sterile water, saline solutions used in irrigation procedures

Breathing respirator

Enema supplies

Post-surgery anti-embolism supplies

TAXABLE

Major movable equipment purchased by the facility for the rendering of patient care (i.e., radiology equipment, laboratory equipment, respiratory equipment, etc.)

Medical equipment, devices and supplies consumed by the practitioner in the performance of professional services:

Vacuum canisters, suction/drainage canister

Feeding pumps

Universal precaution devices and supplies (e.g., gloves, gowns, etc.)

Any other supplies and equipment which are used by the practitioner which are discarded after use, or remain the property of the hospital for reuse.

Monitoring and diagnostic supplies:

Thermometers, blood pressure cuffs

Syringes, needles used to draw blood for laboratory analysis

Isosator/Isostat supplies

- Radiology supplies, contrast media
- Glucose monitoring equipment, test strips
- EKG/EEG supplies
- Any other supplies or devices used in monitoring and diagnosis

General supplies:

- Bed linens, towels, bed pans, incontinent pads, etc.
- Dietary trays and supplies
- Patient personal items (i.e., toothpaste, lotions, tissues, etc.)

Under the taxable/nontaxable framework, items like alcohol swabs, probe covers, and gloves would be taxable, whereas items like wheelchairs and drugs (legend and non-legend) would be tax exempt if prescribed by a person licensed to prescribe. The taxpayer outlines the two areas of contention as: (1) protest of proposed assessment (Exhibit 1 of the Protest Letter); and (2) failure to give credit for tax paid in error (Exhibit 2 of the Protest Letter).

FINDING

The taxpayer's protest of the assessed items is sustained to the extent that items that should have been non-taxable (under the above framework) were taxed. The auditor is instructed to review the audit for items listed as non-taxable that were taxed. With regard to the credit for tax paid in error, the taxpayer is sustained on the syringes. With regard to other items that should have been purchased tax exempt, but were not, the auditor is instructed to give credit for it to the extent that those items comport with the taxable/non-taxable framework above and can be verified by audit.

II. Sales and Use Tax - Lump Sum Contract

The taxpayer entered into contracts with several vendors for an irrigation system, awning, water heaters, and electrical boxes. The taxpayer argues that these were lump sum contracts for the improvement of real property. Taxpayer provided the Department with quotations, invoices, and other correspondence to bolster its claim that the contracts were lump sum.

Under 45 IAC 2.2-4-26(a) ("Contractors"), a person "making a contract for the improvement to real estate whereby the material becoming part of the improvement and the labor are quoted as one price is liable for the payment of sales tax on the purchase price of all material so used." The taxpayer has provided documentation to support its contention that the contracts are within the above referenced regulation for two out of the four vendors/contractors at issue.

FINDING

The taxpayer's protest of the use tax on the awning and irrigation system is sustained. The

taxpayer is denied with regard to the water heater and electrical boxes—given the lack of information to rebut the *prima facie* presumption.

III. Sales and Use Tax – Services

DISCUSSION

Taxpayer had design and layout work done for its monthly newsletters. According to the taxpayer, one of two design companies was used. The taxpayer asserts that the design companies would do the design and layout work, and then forward the design to a third-party printer. The taxpayer argues that under 45 IAC 2.2-4-2 the design work is exempt, since the design companies are providing a service only, and did not transfer any property (a separate printing company was used).

However the taxpayer has not overcome its *prima facie* burden, since the taxpayer merely asserts that no property was transferred without providing *indicia* to that effect. The taxpayer was unable to provide copies of the design contracts so that the Department could ascertain the scope, intent, and relationship (i.e., was the design company acting as an agent for the taxpayer). Without evidence to rebut the *prima facie* burden on the taxpayer, the auditor's finding must stand.

FINDING

The taxpayer's protest is denied.

IV. Sales and Use Tax – Casual Sale

DISCUSSION

The taxpayer purchased a cabinet and a wheelchair from two separate individuals. The taxpayer argues that the purchases were casual sales under 45 IAC 2.2-1-1(d), which defines a casual sale as an "isolated or occasional sale by the owner of tangible personal property" who is not in the business of making such sales. The Department agrees that the sales were casual in nature.

FINDING

The taxpayer is sustained.

V. Sales and Use Tax – Use Tax Paid to Another State

DISCUSSION

The taxpayer made purchases from an Illinois company. The purchases were picked up in Illinois, with and sales tax was paid there. The taxpayer provided invoices showing that the goods were shipped via “counter pickup” and that no freight was charged.

FINDING

The taxpayer’s protest is sustained.

VI. Tax Administration – Penalty

DISCUSSION

Pursuant to Indiana Code 6-8.1-10-2.1, the Department may waive the penalty upon the taxpayer’s affirmative showing of a reasonable cause for the failure to pay the proper tax. Regulation 45 IAC 15-11-2 also states:

(b) “Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.

The Department finds that the deficiency was not due to reasonable cause. The taxpayer did not take prudent care in establishing a use tax accrual system to self-assess tax on taxable purchases. Beyond the issues protested herein, the audit also picked up subscriptions to periodicals, the lease of tangible property, and the failure to register as retail merchants as required under Indiana law.

FINDING

The taxpayer’s protest is denied.